IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5348 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESARBA WD/O DALPATSINH DANSINH ZALA

Versus

DIRECTOR PENSION & PROVIDENT FUND

Appearance:

1. Special Civil Application No. 5348 of 2001

MR JV JAPEE for Petitioner No. 1

MR RV DESAI, AGP for Respondent No. 1-4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/10/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, widow of a retired government employee, has prayed for a direction to the respondent authorities - Director of Pension & Provident Fund, Assistant Supervisor, Local Funds Accounts,

Himatnagar, District Superintendent of Police and the State of Gujarat in the Finance Department to pay the petitioner special family pension as per relevant Government Resolutions of the State Government from 1.7.1982 and pay the same alongwith arrears with interest.

2. The petitioner is the widow of Dalpatsinh Dansinh Zala (hereinafter referred to as "the deceased"). According to the petitioner, the deceased had joined the police department as an unarmed head constable on 25.9.1948 and while in service the deceased expired on 8.8.1957. The District Superintendent of Police, Himatnagar has earlier issued the certificate about the aforesaid services rendered by the deceased. The certificate is at Annexure "B" to the petition. The respondents had fixed ex-gratia financial assistance at Rs.80/- per month from 1.7.1982 and thereafter at Rs.375/per month from 1.10.1987 and Rs.1275/- from 1.1.1986 vide pension payment order No. L/SK/STATE/370. The said pension payment order was prepared after the petitioner had produced the aforesaid certificate of the District Superintendent of Police and also the affidavits of two co-employees of the deceased. According to the petitioner, the District Superintendent of Police issued the aforesaid certificate on the basis of the hand register as stated in the letter dated 22.5.2000 (Annexure "I" - pg. 26) from the Director of Pension and Provident Fund to the State Government.

The petitioner's grievance is that the petitioner is not being paid any dearness allowance or other increase of the aforesaid ex-gratia amount of Rs.1275/from 1.1.1996 and on the smaller amounts for the prior periods.

3. In response to the notice issued by this Court, affidavit in reply has been filed by the Deputy Director of Pension & Provident Fund stating, inter alia, that the petitioner would be entitled to get family pension only when all the relevant documents like service book, salary register, pay fixation register etc. are produced to prove that the deceased had worked continuously for 5 years. Since these records are not produced, the special family pension cannot be granted. It is, however, the case of the respondents that as per the Government Resolution dated 3.8.1992, if the government employee had expired or retired prior to 1.5.1960, the benefit of family pension can be given only from 1.4.1992 and, therefore, the petitioner's claim for family pension from 1.7.1982 cannot be allowed.

4. In rejoinder, Mr Japee for the petitioner points out that as per the instructions dated 16.2.1993 from the State Government to the Director of Pension & Provident Fund (Annexure "I" to the reply affidavit bearing No. NVM-1390-261-5.1) issued by the Finance Department, family pension may be paid even if the original service record is not available on account of fire, floods, any natural calamity or for any other reason. If any collateral record is available regarding the deceased government servant having rendered 5 years service, in such a case, family pension can be paid as per Government Resolution dated 24.3.1992.

5. Having heard the learned counsel for the parties, it appears to the Court that the petitioner's claim for family pension with effect from 1.7.1982 cannot be granted in view of the Government Resolution dated 24.3.1992 and, therefore, the petitioner would be entitled to have her case for family pension considered with effect from 1.4.1992 about which date thee is no dispute raised on behalf of the respondents. The only question which now survives is whether from 1.4.1992 the petitioner is entitled to family pension which is being denied only on the ground that the original service record is not available.

6. It appears from the material on record that the pension payment order produced at Annexure "C" to the petition was already prepared on 20.1.1988 and the petitioner is being paid the ex-gratia amount with effect from 1.7.1982. It is, therefore, reasonable to proceed on the basis that the respondent authorities did have some material before the pension payment order was prepared even for the purpose of ex-gratia amount. In fact, Annexure "C" indicates that there is a reference to State file because, according to the petitioner, the petitioner's husband was employed from 1948 till the date of his death in year 1957. Moreover, letter dated 22.5.2000 (Annexure "I") from the Director of Pension & Provident Fund indicates that the District Superintendent of Police had issued the certificate about the petitioner's husband having rendered services as a head constable between 1948 and 1957 on the basis of the hand register. When a responsible officer of the rank of the District Superintendent of Police has given such a certificate on the basis of the government record like hand register, it is not proper for the respondent authorities not to rely on such record for the purpose of sanctioning family pension to the petitioner especially when the pension payment order was prepared way back in

the year 1988 for payment of ex-gratia amount with effect from 1.7.1982.

7. As regards the submission made on behalf of the respondents that there is gross delay in filing this petition, Mr Desai, learned AGP has further relied on the decision dated 5.2.2002 of this Court in Special Civil Application No. 2962 of 1992.

It is true that there is delay in filing this petition, but the principle that the Court would not entertain petitions after gross delay is a rule of prudence and caution. There is no dispute about the fact that in the year 1988 the respondents had prepared the pension payment order for granting the petitioner ex-gratia payment with effect from 1.7.1982. The petitioner was thereafter making representations for granting the petitioner family pension and not just the ex-gratia amount. Even so, on the ground that the petitioner did not approach this Court expeditiously, this Court is denying the petitioner interest on arrears of family pension. In the facts of Special Civil Application No. 2962 of 1992, the Court was concerned with the case whether there was no service record available and the husband of the petitioner had retired from service in 1934 and the petition was filed in the year 1992. There was nothing like payment of ex-gratia amount and, therefore, the facts of the present case are not comparable to those in the aforesaid case.

8. In view of the aforesaid discussion, this petition is allowed. The respondents are directed to sanction in favour of the petitioner special family pension with effect from 1.4.1992 and to pay the petitioner all the arrears from that date. The Court, however, does not award any interest on such arrears in view of the fact that the petition has been filed in 2001. The amounts already paid to the petitioner will of course be adjusted against the amounts required to be paid to the petitioner as per the direction contained in this judgment.

This direction shall be complied with by the respondents within three months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

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